

LDWSP
12.3.8
11/30/09



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue
Seattle, Washington 98101

NOV 30 2009

Reply To
Attn Of: ECL-111

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Eileen Flink
Assistant General Counsel
Ash Grove Cement Company
11011 Cody
P.O. Box 25900
Overland Park, Kansas 66210

Re: Supplemental Request for Information Pursuant to Section 104(e) of CERCLA, for the
Lower Duwamish Waterway Superfund Site, Seattle, Washington

Site: Ash Grove Cement Company
3801 E Marginal Way
Seattle, WA 98134-1147

King County Parcels: 766700350, 766700390, 76600395, and 1924049029

Dear Ms. Flink:

The United States Environmental Protection Agency, Region 10 (EPA) continues to investigate the releases or threat of releases of hazardous substances associated with the Lower Duwamish Waterway Superfund Site ("LDW Superfund Site"). EPA seeks your cooperation in this investigation.

EPA reviewed your response to the Request for Information dated August 23, 2007 and has additional and clarifying questions that are set forth in the enclosed Supplemental Information Request. This information will be used for the purposes of determining the need for response, or choosing or taking any response action at the LDW Superfund Site, and to identify additional potentially responsible parties for performing the cleanup.

Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), requires you to respond to the requests set forth in the Supplemental Information Request.

Failure to provide a complete, truthful response to this Supplemental Information Request



within sixty (60) days of your receipt of this letter, or to adequately justify such failure to respond, may subject you to an enforcement action pursuant to Section 104(e) of CERCLA. The statute permits EPA to seek the imposition of penalties of up to thirty-seven thousand five hundred dollars (\$37,500) for each day of non-compliance.

Please note that responses which are incomplete, ambiguous, or evasive may be treated as non-compliance with this Supplemental Information Request. Provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.


Your response to this Supplemental Information Request should be mailed to:

United States Environmental Protection Agency, Region 10
Claire Hong, Remedial Project Manager
Environmental Cleanup Office, ECL-111
1200 Sixth Ave. Suite 900
Seattle, Washington 98101

If you have questions concerning this letter or the LDW Superfund Site, please contact Claire Hong (206) 553-1813. Any communication by any attorney on your behalf should be directed to Alexander Fidis, EPA Office of Regional Counsel, at (206) 553-4710.

Thank you for your cooperation in this matter.

Sincerely,


Sheila Eckman, Unit Manager
Site Cleanup Unit #3
Office of Environmental Cleanup

Enclosures:

Supplemental Information Request
Definitions
Instructions
Declaration

cc: Dan Cargill, Ecology/NWRO
Joshua M. Lipsky, Cascadia Law Group PLLC
Rodney L. Brown, Jr., Cascadia Law Group PLLC

U.S. EPA

CERCLA SECTION 104(e)

SUPPLEMENTAL INFORMATION REQUEST

Please note: This Supplemental Information Request includes instructions for responding to this request and definitions of words such as "Respondent," "Site," and "identify" used in the questions. Any references to specific question numbers refer to the First Information Request, dated August 23, 2007.

INFORMATION REQUEST QUESTIONS

1. Respondent Information

- a. Provide the full legal name and mailing address of the Respondent.
- b. For each person answering these questions on behalf of Respondent, provide:
 - i. full name;
 - ii. title;
 - iii. business address; and
 - iv. business telephone number and FAX machine number.

2. Site Activities and Interests

- a. Provide any additional information regarding the settling pond formerly present at the Site. Your initial response to question 2.h. indicated that the pond was dredged periodically before being filled and paved in 1992. Specifically, provide any documentation indicating when the pond sediments were last removed prior to the filling, documentation of the disposal of dredged sediments, and any additional sampling information pertaining to the pond, sediments, and/or underlying soil and groundwater.
- b. Provide any information regarding a second seepage pond identified at the Site in a November 1, 1984, Potential Hazardous Waste Site Preliminary Assessment conducted by the Washington Department of Ecology (Ecology).
- c. Provide more specific detail as to how the truck wash water and compressor cooling water

from loading machinery were handled at the West Terminal during the leasing period from 1987 to 1991. In addition, describe the wastewater, stormwater, cooling water, and any other water discharging practices including any sampling information from the West Terminal. Your initial response stated that "truck wash water and compressor cooling water from loading machinery were excluded from the NPDES" but does not clearly explain how they were managed.

- d. Provide a copy of the NPDES permit for the West Terminal referenced in your initial response.
- e. Provide all additional information on the removal of Underground Storage Tanks (USTs) from the Site. Your initial response to question 2.b. states that all USTs were removed by 1986. The Annual Report to President Reviewing 1984 provided in the initial response indicated that two were removed in 1985 and an Inter-Office Memorandum dated April 21, 1986, indicated two additional USTs were removed in 1986. Include all documentation of these removals, related sampling, disposal, confirmation or testing for holes or leaks in the removed USTs, materials stored in the USTs, and the composition of the USTs.
- f. Describe and provide any documentation regarding where kiln bricks were disposed, quantities disposed, amounts remaining at the Site as fill or otherwise, and any testing or documentation of the composition of the kiln bricks. A trip report from an inspection of the Site conducted for EPA on July 29, 1987, indicated that kiln bricks were disposed at the facility and recycled into the cement process.
- g. Provide all information regarding the removal of PCB contaminated soils from the Site in 1986 and referenced in supporting documents included in your initial response, including the Chem-Security Systems Disposal Request dated July 24, 1986 and a letter containing Hazardous Waste Manifests from Crowley Environmental Services dated August 12, 1986. Provide all documentation related to the handling, management, and/or disposal of the multiple PCB contaminated transformers which were identified as having possible leaks in the undated Transformer Data document provided in response to question 2.f. In addition, identify any release, removal, or disposal of PCBs, and any investigation, inspection, or sampling related to PCBs or equipment potentially containing PCBs at the Site.
- h. Provide all information on the release of cement dust to the Duwamish Waterway during or prior to August 1984, which resulted in the filing of a lawsuit against Ash Grove for violation of the Clean Water Act. This release and subsequent action was identified in the Final Data Gaps Report – RM 0.0-0.1 East published on December 3, 2008, prepared for Ecology.
- i. Provide all information regarding a Gary Merlino Construction Co. employee pumping water directly from an excavation at the Site to the Duwamish Waterway during or prior to February 1992. This event was identified in the Final Data Gaps Report – RM 0.0-0.1 East published on December 3, 2008, prepared for Ecology.

- j. Provide all information regarding a reported 250 ft. by 500 ft. sheen reported on the surface of the Duwamish Waterway near the Site on May 21, 1998. This incident was reported to the National Response Center (NRC) and recorded in Incident Report # 438069.
- k. Provide all information regarding a release to the Duwamish Waterway on April 8, 1985, including the amount and identity of the released substance and a description of any resulting clean-up action. The notification from the United States Coast Guard dated April 8, 1985, and provided in your initial response, identified this release but provided limited information.
- l. Provide all information regarding the February 1992 overfilling of a silo and resulting spill including the amount and identity of the released substance and a description of any resulting clean-up action. The Inter-Office Memorandum dated February 15, 1992 provided in your initial response, identified this release but provided limited information.
- m. Provide all information regarding air emissions, quality, and permitting at the Site including but not limited to:
 - i. All former and present permits;
 - ii. Occurrences of violations, penalties, citations, and deficiencies; and
 - iii. Investigations, inspections, sampling, and reports generated by Respondent and/or others.
- n. Provide documentation of any analysis on, testing of, or information on the composition of the waste oil burned in the kiln at the Site as described in your initial response to question 2.d. and the 1997 Waste Reduction/Waste Minimization document provided in your initial response.
- o. Provide information or a statement that clarifies whether or not in 1995 dredging of approximately 10,000 cubic yards of sediment from the berthing area occurred, as referenced in the August 2001 Biological Evaluation provided in your initial response. If the dredging occurred, provide any and all documentation regarding this event, disposal of the sediments, and any related sampling reports.
- p. Provide all information regarding the source of and dredging associated with the "river bottom dredging" stored at the East Terminal and referenced in an Inter-Office Memorandum dated December 15, 1986 provided in your initial response.
- q. Describe the relationship between Respondent and the two individuals employed by Lafarge North America, Inc. (Lafarge), and listed in response to question 3.d. Additionally identify any connection between Respondent and Lafarge.

- r. Provide all information regarding the drilling and sampling at the Site that was carried out by RAZ in 1989 and referenced in an Inter-Office Memorandum dated March 27, 1989 provided in your initial response. Specifically include any report or sampling data from the event.
- s. Provide all documents not previously provided in response to the initial Request for Information, or otherwise provided in response to this Supplemental Information Request, regarding environmental conditions of the Site. Environmental conditions of the Site includes information related to soil, sediment, water (ground and surface), and air quality, such as, but not limited to:
 - i. Any spill, leak, release, or discharge of a hazardous substance, waste, or material at or near the Site;
 - ii. Occurrences of violations, citations, deficiencies, and/or accidents concerning the Site;
 - iii. Remediation or removal of contaminated soils, sediments, or other media at the Site; and
 - iv. Investigations, inspections, sampling, and reports generated by Respondent and/or others regarding the Site and surrounding area.
- t. Provide any available site diagrams, plans, and maps depicting the East Terminal prior to 1973 and currently.

3. Compliance with This Request

- a. Describe all sources reviewed or consulted in responding to this request, including, but not limited to:
 - i. the name and current job title of all individuals consulted;
 - ii. the location where all documents reviewed are currently kept.

INSTRUCTIONS

1. Answer Each Question Completely. Provide a separate answer to each question and subpart set forth in this Supplemental Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Supplemental Information Request and may subject the Respondent to the penalties set out in the cover letter.
2. Response Format and Copies. Provide the responses to this Supplemental Information Request and at least one copy of all requested documents either electronically or on paper (hard copy). Your submission, whether electronic or hard copy, must include an index that lists all the responsive documents provided, and that indicates where each document is referenced in the written response, and to which question or questions each document is responsive. Additionally, please clearly identify and segregate any information you determine to be Confidential Business Information (CBI).

If providing your response electronically, it must be submitted on a compact disc in Portable Document Format (PDF) and comply with the following requirements:

- a. CBI and personal privacy information should be provided on separate media (e.g., a separate CD) and marked as such to ensure information is appropriately handled and physically separated from the other response information in EPA's files.
 - b. The declaration must be provided in hard copy with an original signature.
 - c. All documents originally smaller than 11 by 17 inches can be submitted electronically; any documents originally larger than 11 by 17 inches must be submitted in hard copy.
 - d. Electronic PDF files cannot be submitted in Adobe Acrobat versions above 6 (or above PDF format version 1.5 if not using Adobe).
 - e. Electronic PDF files must be text-searchable.
 - f. The document index must clearly identify any single electronic document which has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.
3. Number Each Answer. Number each answer with the number of the question to which it corresponds.
 4. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. Seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered noncompliance with this Supplemental Information Request.
 5. Identify Information Sources. For each question, identify all persons and documents relied

upon for the answer.

6. Confidential Information. The information requested herein must be provided even though the Respondent may contend that it includes confidential information or trade secrets. The Respondent may assert a confidentiality claim covering part or all of the information requested, pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b). All information claimed to be confidential should be contained on separate sheet(s) and should be clearly identified as "trade secret" or "proprietary" or "company confidential." A confidentiality claim should be supported by the submission of information consistent with 40 C.F.R. Part 2. Information covered by a confidentiality claim will be disclosed by EPA only to the extent, and only by means of the procedures, provided in 40 C.F.R. §§ 2.201-2.311. **If no such claim accompanies the information received by EPA, it may be made available to the public by EPA without further notice.**
7. Disclosure to EPA Contractor. Information submitted in response to this Supplemental Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. § 2.310(h), even if the Respondent asserts that all or part of it is confidential business information. EPA may provide this information to its contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Supplemental Information Request. If submitting information and asserting it is entitled to treatment as confidential business information, the Respondent may comment on EPA's intended disclosure within 14 days of receiving this Supplemental Information Request.
8. Personal Privacy Information. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from responses, included on separate sheet(s), and marked as "Personal Privacy Information". Note, however, that unless prohibited by law, EPA may disclose this information to the general public without further notice.
9. Objections. The Respondent must provide responsive information notwithstanding objections to certain questions. To object without providing responsive information may subject Respondent to the penalties set out in the cover letter.
10. Privilege. If a privilege is asserted for any document responsive to this Supplemental Information Request, identify (see Definitions) the document and provide the basis for assertion. If a privilege exists for only a portion of a document, provide the portion of the document that is not asserted be privileged, identify the portion that is asserted to be privileged, and provide the basis for asserting privilege. **Please note that regardless of the assertion of any privilege, any facts contained in the document which are responsive to the Supplemental Information Request must be disclosed in your response.**
11. Declaration. The Respondent must complete the enclosed declaration, certifying the accuracy of all statements in your response.

DEFINITIONS

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601, *et seq.*, or Volume 40 of the Code of Federal Regulations (CFR), in which case such statutory or regulatory definitions shall apply.

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "Respondent" shall mean the addressee of this Request, together with the addressee's agents, employees, and contractors.
2. The terms "document" and "documents" shall mean any method of recording, storing, or transmitting information. "Document" shall include, but not be limited to:
 - a. writings of any kind, including, but not limited to, any of the following:
 - i. letters, memoranda, fax transmittals;
 - ii. meeting minutes, telephone records, notebooks;
 - iii. agreements and contracts;
 - iv. reports to shareholders, management, or government agencies;
 - v. transportation manifests;
 - vi. copies of any document.
 - b. any film, photograph, or sound recording on any type of device;
 - c. any blueprints or drawings;
 - d. attachments to, or enclosures with, any document.
3. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name, (b) present or last known business and home addresses and telephone numbers; and (c) present or last known employer (include full name and address) with job title, position, or business.

4. The term "identify" means, with respect to a corporation, partnership, business trust, or other entity, to set forth: (a) its full name; (b) complete street address; (c) legal form (e.g., corporation, partnership, etc.); (d) the state under whose laws the entity was organized; and (e) a brief description of its business.
5. The term "identify" means, with respect to a document, to provide: (a) its customary business description (e.g., letter, invoice); (b) its date; (c) its number if any (e.g., invoice or purchase order number); (d) the identity of the author, addressee, and/or recipient; and (e) a summary of the substance or the subject matter. **Alternatively**, Respondent may provide a complete copy of the document.
6. The term "material" or "materials" shall mean any and all raw materials, commercial products, wastes, chemicals, substances, or matter of any kind.
7. The "period being investigated" and "the relevant time period" shall mean the date of Respondent's first involvement at the Site to present.
8. The term "property" shall mean any interest in real or personal property whatsoever, including fee interests, leases, licenses, rental, and mineral rights.
9. The "Site" shall mean any or all property or area described as or near 3801 E Marginal Way; and King County Tax Parcels: 766700350, 766700390, 76600395, and 1924049029.
10. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including, but not limited to, building debris and asbestos-containing material.
11. The term "business activities" shall mean all actions, endeavors, ventures, or financing arrangements related in any manner whatsoever to the use and development of the Site, including surveying, sampling, grading, documentation, photography, demolition, construction, and waste disposal, and sales.

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on _____, 2009.

Signature

Type or Print Name

Title

Mailing Address:

Eileen Flink
Assistant General Counsel
Ash Grove Cement Company
11011 Cody
P.O. Box 25900
Overland Park, Kansas 66210

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Eileen Flink, Assistant General Counsel
Ash Grove Cement Company
11011 Cody
PO Box 25900
Overland Park, KS 66210

2. Article Number
(Transfer from serv)

7008 0150 0000 8073 4609

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Eileen Flink

☐ Agent

☐ Addressee

B. Received by (Printed Name)

B Echo **DEC 07 2009**

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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United States Environmental Protection
Agency, Region 10
Claire Hong, Remedial Project Manager
Environmental Cleanup Office, ECL-111
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

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DEC 10 2009

Environmental
Cleanup Office

